

SEC. 637. DEVELOPMENT OF ESRD BUNDLING SYSTEM AND QUALITY INCENTIVE PAYMENTS.

(a) Development of ESRD Bundling System- Subsection (b) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is further amended--

(1) in paragraph (12)(A), by striking `In lieu of payment' and inserting `Subject to paragraph (14), in lieu of payment';

(2) in the second sentence of paragraph (12)(F)--

(A) by inserting `or paragraph (14)' after `this paragraph'; and

(B) by inserting `or under the system under paragraph (14)' after `subparagraph (B)';

(3) in paragraph (12)(H)--

(A) by inserting `or paragraph (14)' after `under this paragraph' the first place it appears; and

(B) by inserting before the period at the end the following: `or, under paragraph (14), the identification of renal dialysis services included in the bundled payment, the adjustment for outliers, the identification of facilities to which the phase-in may apply, and the determination of payment amounts under subparagraph (A) under such paragraph, and the application of paragraph (13)(C)(iii)';

(4) in paragraph (13)--

(A) in subparagraph (A), by striking `The payment amounts' and inserting `subject to paragraph (14), the payment amounts'; and

(B) in subparagraph (B)--

(i) in clause (i), by striking `(i)' after `(B)' and by inserting `, subject to paragraph (14)' before the period at the end; and

(ii) by striking clause (ii); and

(5) by adding at the end the following new paragraph:

`(14)(A) Subject to subparagraph (E), for services furnished on or after January 1, 2010, the Secretary shall implement a payment system under which a single payment is made under this title for renal dialysis services (as

defined in subparagraph (B)) in lieu of any other payment (including a payment adjustment under paragraph (12)(B)(ii)) for such services and items furnished pursuant to paragraph (4). In implementing the system the Secretary shall ensure that the estimated total amount of payments under this title for 2010 for renal dialysis services shall equal 96 percent of the estimated amount of payments for such services, including payments under paragraph (12)(B)(ii), that would have been made if such system had not been implemented.

` (B) For purposes of this paragraph, the term `renal dialysis services' includes--

` (i) items and services included in the composite rate for renal dialysis services as of December 31, 2009;

` (ii) erythropoietin stimulating agents furnished to individuals with end stage renal disease;

` (iii) other drugs and biologicals and diagnostic laboratory tests, that the Secretary identifies as commonly used in the treatment of such patients and for which payment was (before the application of this paragraph) made separately under this title, and any oral equivalent form of such drugs and biologicals or of drugs and biologicals described in clause (ii); and

` (iv) home dialysis training for which payment was (before the application of this paragraph) made separately under this section.

Such term does not include vaccines.

` (C) The system under this paragraph may provide for payment on the basis of services furnished during a week or month or such other appropriate unit of payment as the Secretary specifies.

` (D) Such system--

` (i) shall include a payment adjustment based on case mix that may take into account patient weight, body mass index, comorbidities, length of time on dialysis, age, race, ethnicity, and other appropriate factors;

` (ii) shall include a payment adjustment for high cost outliers due to unusual variations in the type or amount of medically necessary care, including variations in the amount of erythropoietin stimulating agents necessary for anemia management; and

` (iii) may include such other payment adjustments as the Secretary determines appropriate, such as a payment adjustment--

` (I) by a geographic index, such as the index referred to in paragraph (12)(D), as the Secretary determines to be appropriate;

` (II) for pediatric providers of services and renal dialysis facilities;

` (III) for low volume providers of services and renal dialysis facilities;

` (IV) for providers of services or renal dialysis facilities located in rural areas; and

` (V) for providers of services or renal dialysis facilities that are not large dialysis facilities.

` (E) The Secretary may provide for a phase-in of the payment system described in subparagraph (A) for services furnished by a provider of services or renal dialysis facility described in any of subclauses (II) through (V) of subparagraph (D)(iii), but such payment system shall be fully implemented for services furnished in the case of any such provider or facility on or after January 1, 2013.

` (F) The Secretary shall apply the annual increase that would otherwise apply under subparagraph (F) of paragraph (12) to payment amounts established under such paragraph (if this paragraph did not apply) in an appropriate manner under this paragraph.'

(b) Prohibition of Unbundling- Section 1862(a) of such Act (42 U.S.C. 1395y (a)) is amended--

(1) by striking ` or' at the end of paragraph (21);

(2) by striking the period at the end of paragraph (22) and inserting ` ; or'; and

(3) by inserting after paragraph (22) the following new paragraph:

` (23) where such expenses are for renal dialysis services (as defined in subparagraph (B) of section 1881(b)(14)) for which payment is made under such section (other than under subparagraph (E) of such section) unless such payment is made under such section to a provider of services or a renal dialysis facility for such services.'

(c) Quality Incentive Payments- Section 1881 of such Act is amended by adding at the end the following new subsection:

` (i) Quality Incentive Payments in the End-Stage Renal Disease Program-

` (1) QUALITY INCENTIVE PAYMENTS FOR SERVICES FURNISHED IN 2008, 2009, AND 2010-

` (A) IN GENERAL- With respect to renal dialysis services furnished during a performance period (as defined in subparagraph (B)) by a provider of services or renal dialysis facility that the Secretary determines meets the applicable performance standard for the period under subparagraph (C) and reports on measures for 2009 and 2010 under subparagraph (D) for such services, in addition to the amount otherwise paid under this section, subject to subparagraph (G), there also shall be paid to the provider or facility an amount equal to the applicable percentage (specified in subparagraph (E) for the period) of the Secretary's estimate (based on claims submitted not later than two months after the end of the performance period) of the amount specified in subparagraph (F) for such period.

` (B) PERFORMANCE PERIOD- In this paragraph, the term 'performance period' means each of the following:

` (i) The period beginning on July 1, 2008, and ending on December 31, 2008.

` (ii) 2009.

` (iii) 2010.

` (C) PERFORMANCE STANDARD-

` (i) 2008- For the performance period occurring in 2008, the applicable performance standards for a provider or facility under this subparagraph are--

` (I) 92 percent or more of individuals with end stage renal disease receiving erythropoetin stimulating agents who have an average hematocrit of 33.0 percent or more; and

` (II) less than a percentage, specified by the Secretary, of individuals with end stage renal disease receiving erythropoetin stimulating agents who have an average hematocrit of 39.0 percent or more.

` (ii) 2009 AND 2010- For the 2009 and 2010 performance periods, the applicable performance standard for a provider or facility under this subparagraph is successful performance (relative to national average) on--

` (I) such measures of anemia management as the Secretary shall specify, including measures of hemoglobin levels or hematocrit levels for erythropoietin stimulating agents that are consistent with the labeling for dosage of erythropoietin stimulating agents approved by the Food and Drug Administration for treatment of anemia in patients with end stage renal disease, taking into account variations in hemoglobin ranges or hematocrit levels of patients; and

` (II) such other measures, relating to subjects described in subparagraph (D)(i), as the Secretary may specify.

` (D) REPORTING PERFORMANCE MEASURES- The performance measures under this subparagraph to be reported shall include--

` (i) such measures as the Secretary specifies, before the beginning of the performance period involved and taking into account measures endorsed by the National Quality Forum, including, to the extent feasible measures on--

` (I) iron management;

` (II) dialysis adequacy; and

` (III) vascular access, including for maximizing the placement of arterial venous fistula; and

` (ii) to the extent feasible, such measure (or measures) of patient satisfaction as the Secretary shall specify.

The provider or facility submitting information on such measures shall attest to the completeness and accuracy of such information.

` (E) APPLICABLE PERCENTAGE- The applicable percentage specified in this subparagraph for--

` (i) the performance period occurring in 2008, is 1.0 percent;

` (ii) the 2009 performance period, is 2.0 percent; and

` (iii) the 2010 performance period, is 3.0 percent.

In the case of any performance period which is less than an entire year, the applicable percentage specified in this subparagraph shall be multiplied by the ratio of the number of months in the year to the number of months in such performance period. In the case of

2010, the applicable percentage specified in this subparagraph shall be multiplied by the Secretary's estimate of the ratio of the aggregate payment amount described in subparagraph (F)(i) that would apply in 2010 if paragraph (14) did not apply, to the aggregate payment base under subparagraph (F)(ii) for 2010.

` (F) PAYMENT BASE- The payment base described in this subparagraph for a provider or facility is--

` (i) for performance periods before 2010, the payment amount determined under paragraph (12) for services furnished by the provider or facility during the performance period, including the drug payment adjustment described in subparagraph (B)(ii) of such paragraph; and

` (ii) for the 2010 performance period is the amount determined under paragraph (14) for services furnished by the provider or facility during the period.

` (G) LIMITATION ON FUNDING-

` (i) IN GENERAL- If the Secretary determines that the total payments under this paragraph for a performance period is projected to exceed the dollar amount specified in clause (ii) for such period, the Secretary shall reduce, in a pro rata manner, the amount of such payments for each provider or facility for such period to eliminate any such projected excess for the period.

` (ii) DOLLAR AMOUNT- The dollar amount specified in this clause--

` (I) for the performance period occurring in 2008, is \$50,000,000;

` (II) for the 2009 performance period is \$100,000,000; and

` (III) for the 2010 performance period is \$150,000,000.

` (H) FORM OF PAYMENT- The payment under this paragraph shall be in the form of a single consolidated payment.

` (2) QUALITY INCENTIVE PAYMENTS FOR FACILITIES AND PROVIDERS FOR 2011-

` (A) INCREASED PAYMENT- For 2011, in the case of a provider or

facility that, for the performance period (as defined in subparagraph (B))--

- ` (i) meets (or exceeds) the performance standard for anemia management specified in paragraph (1)(C)(ii)(I);
- ` (ii) has substantially improved performance or exceeds a performance standard (as determined under subparagraph (E)); and
- ` (iii) reports measures specified in paragraph (1)(D),

with respect to renal dialysis services furnished by the provider or facility during the quality bonus payment period (as specified in subparagraph (C)) the payment amount otherwise made to such provider or facility under subsection (b)(14) shall be increased, subject to subparagraph (F), by the applicable percentage specified in subparagraph (D). Payment amounts under paragraph (1) shall not be counted for purposes of applying the previous sentence.

` (B) PERFORMANCE PERIOD- In this paragraph, the term `performance period' means a multi-month period specified by the Secretary.

` (C) QUALITY BONUS PAYMENT PERIOD- In this paragraph, the term `quality bonus payment period' means, with respect to a performance period, a multi-month period beginning on January 1, 2011, specified by the Secretary that begins at least 3 months (but not more than 9 months) after the end of the performance period.

` (D) APPLICABLE PERCENTAGE- The applicable percentage specified in this subparagraph is a percentage, not to exceed the 4.0 percent, specified by the Secretary consistent with subparagraph (F). Such percentage may vary based on the level of performance and improvement. The applicable percentage specified in this subparagraph shall be multiplied by the ratio applied under the third sentence of paragraph (1)(E) for 2010.

` (E) PERFORMANCE STANDARD- Based on performance of a provider of services or a renal dialysis facility on performance measures described in paragraph (1)(D) for a performance period, the Secretary shall determine a composite score for such period.

` (F) LIMITATION ON FUNDING- If the Secretary determines that the total amount to be paid under this paragraph for a quality bonus payment period is projected to exceed \$200,000,000, the Secretary shall reduce, in a uniform manner, the applicable

percentage otherwise applied under subparagraph (D) for services furnished during the period to eliminate any such projected excess.

` (3) APPLICATION-

` (A) IMPLEMENTATION- Notwithstanding any other provision of law, the Secretary may implement by program instruction or otherwise this subsection.

` (B) LIMITATIONS ON REVIEW-

` (i) IN GENERAL- There shall be no administrative or judicial review under section 1869 or 1878 or otherwise of--

` (I) the determination of performance measures and standards under this subsection;

` (II) the determination of successful reporting, including a determination of composite scores; and

` (III) the determination of the quality incentive payments made under this subsection.

` (ii) TREATMENT OF DETERMINATIONS- A determination under this subparagraph shall not be treated as a determination for purposes of section 1869.

` (4) TECHNICAL ASSISTANCE- The Secretary shall identify or establish an appropriately skilled group or organization, such as the ESRD Networks, to provide technical assistance to consistently low-performing facilities or providers that are in the bottom quintile.

` (5) PUBLIC REPORTING-

` (A) ANNUAL NOTICE- The Secretary shall provide an annual written notification to each individual who is receiving renal dialysis services from a provider of services or renal dialysis facility that--

` (i) informs such individual of the composite scores described in subparagraph (A) and other relevant quality measures with respect to providers of services or renal dialysis facilities in the local area;

` (ii) compares such scores and measures to the average local and national scores and measures; and

` (iii) provides information on how to access additional

information on quality of such services furnished and options for alternative providers and facilities.

` (B) CERTIFICATES- The Secretary shall provide certificates to facilities and providers who provide services to individuals with end-stage renal disease under this title to display in patient areas. The certificate shall indicate the composite score obtained by the facility or provider under the quality initiative.

` (C) WEB-BASED QUALITY LIST- The Secretary shall establish a web-based list of facilities and providers who furnish renal dialysis services under this section that indicates their composite score of each provider and facility.

` (6) RECOMMENDATIONS FOR REPORTING AND QUALITY INCENTIVE INITIATIVE FOR PHYSICIANS- The Secretary shall develop recommendations for applying quality incentive payments under this subsection to physicians who receive the monthly capitated payment under this title. Such recommendations shall include the following:

` (A) Recommendations to include pediatric specific measures for physicians with at least 50 percent of their patients with end stage renal disease being individuals under 18 years of age.

` (B) Recommendations on how to structure quality incentive payments for physicians who demonstrate improvements in quality or who attain quality standards, as specified by the Secretary.

` (7) REPORTS-

` (A) INITIAL REPORT- Not later than January 1, 2013, the Secretary shall submit to Congress a report on the implementation of the bundled payment system under subsection (b)(14) and the quality initiative under this subsection. Such report shall include the following information:

` (i) A comparison of the aggregate payments under subsection (b)(14) for items and services to the cost of such items and services.

` (ii) The changes in utilization rates for erythropoietin stimulating agents.

` (iii) The mode of administering such agents, including information on the proportion of such individuals receiving such agents intravenously as compared to subcutaneously.

` (iv) The frequency of dialysis.

` (v) Other differences in practice patterns, such as the adoption of new technology, different modes of practice, and variations in use of drugs other than drugs described in clause (iii).

` (vi) The performance of facilities and providers under paragraph (2).

` (vii) Other recommendations for legislative and administrative actions determined appropriate by the Secretary.

` (B) SUBSEQUENT REPORT- Not later than January 1, 2015, the Secretary shall submit to Congress a report that contains the information described in each of clauses (ii) through (vii) of subparagraph (A) and a comparison of the results of the payment system under subsection (b)(14) for renal dialysis services furnished during the 2-year period beginning on January 1, 2013, and the results of such payment system for such services furnished during the previous two-year period.'